Mr. Thurston in his evidence said that in the early days the testator's intention was that he would eventually return to Hongkong. Subsequently after a holiday in England the testator favoured settling eventually in England and they had discussed trying to find a suitable property for him in Kent.

There is no dispute that the domicile of origin of the testator was Pakistan. It is the contention of the plaintiffs that the testator had acquired a domicile of choice in Singapore. The second defendant does not contend that the testator had acquired a domicile of choice in Hongkong but she contends that the onus is on the plaintiffs to prove that the testator had acquired a domicile of choice in Singapore and unless they discharged this onus then the testator's domicile of origin has not been lost. The only question now is whether the testator had acquired a domicile of choice in Singapore.

The two requisites for the acquisition of a domicile of choice are residence and intention of permanent or indefinite residence. There is no difficulty about "residence" in this case. It has been sufficiently proved that the testator was resident in Singapore for 21 years. The next question is as regards the testator's intention to remain here. I think that in the evidence the plaintiffs have discharged the burden of proving that the testator intended to remain here permanently. The facts which in my judgment prove that the testator intended to remain here permanently are numerous and I need only shortly mention a few that strike me most. The testator had no intention whatsoever of ever returning to Pakistan and he came to Singapore as a very young man to better his prospects. It is reasonable to infer that he came to Singapore with the intention of staying here permanently or for an unlimited time. Even if he did not have that intention when he first came to Singapore, he had formed and retained a fixed and settled intention of residing in Singapore after the liberation when he commenced to do business of a transport agency and bought a house here to live in. This intention of living in England deposed to by Mr. Lewis and Mr. Thurston came when the testator had become a successful business man and after he had acquired a domicile of choice in Singapore. In order to lose the domicile of choice and revive the domicile of origin it is not sufficient for the testator to form the intention of leaving the domicile of choice, but he must actually leave it with the intention of leaving it permanently. (*In re Marrett, Chalmers* v. *Wingfield* [1]).

There remain the question of the declaration of the testator contained in his will that he was domiciled in Hongkong. I cannot attach any importance to this declaration. The facts stated by the testator that his father was born in Hongkong and that his and his father's domicile of origin was Hongkong are not correct. His declaration that it was not his intention to remain in Singapore indefinitely and that his intention was eventually to return to Hongkong are inconsistent with the facts.

The answer to the second question is that at the date of his death the testator was domiciled in Singapore.

Questions answered.

Solicitors: *Mallal & Namazie; Allen & Gledhill; Pillai & Co.*

REG. v. TAN HONG HENG

[A.Cr.J. (Chua J.) June 25, 1958]

[Singapore — Magistrate's Appeal No. 176 of 1957]

Road Traffic — Using motor cycle whilst not covered by third party insurance — Holder of provisional driving licence — Breach of essential conditions of licence — Road Traffic Ordinance, (Cap. 227), s. 46(2).

Insurance — Third party insurance — Failure to display "L" plates.

The respondent, the holder of a provisional driving licence, was driving a motor cycle with a pillion rider. There were no "L" plates on the front and the rear of the respondent's motor cycle and the pillion rider was not a holder of a driving licence. A policy of insurance had been issued in the name of the respondent in respect of the motor cycle covering third party risk and under the policy the insurance company agreed to indemnify the policyholder or any person who is driving on the policyholder's order or with his permission, provided that the person driving holds a licence to drive the vehicle. No evidence was called at the trial to show that the insurance company had disclaimed liability. The learned magistrate acquitted the respondent on the charge of using the motor vehicle whilst not covered by third party insurance and the Crown appealed against the acquittal. It was argued on behalf of the Crown that the policy of insurance covered the respondent only if he held a licence to drive the motor cycle and as the respondent was driving the motor cycle in breach of the essential conditions of his provisional driving licence he was riding his motor cycle without licence and therefore was using the vehicle without there being in force a policy of insurance. On behalf of the respondent it was argued that the insurance company by issuing the policy have satisfied themselves that they will take the risk whenever the respondent is driving whether the respondent is a holder of a driving licence or not, but where a person other than the respondent drives they will only take risk if such person holds a licence; and that until the insurance company disclaimed liability, it cannot be said that there was no insurance in force when the respondent was driving his motor vehicle.

Held: as the prosecution had failed to satisfy the magistrate beyond reasonable doubt that there was no policy of insurance in force by not calling a representative of the insurance company to clarify the position as to whether or not they considered themselves on risk, the magistrate had rightly given the benefit of the doubt to the respondent.

[**Editorial Note:** See *Dodds* v. *R.* (1962), 3 M.C. 320 which was decided subsequent to this case.]

Cases referred to:—

(1) *Ratnam & Anor.* v. *Public Insurance Co.* [1956] M.L.J. 152; [1957] M.L.J. 158, C.A.

(2) *Rubie* v. *Faulkner,* [1940] 1 K.B. 572.

(3) *T. S. B. Maniam* v. *Public Prosecutor* [1946] M.L.J. 39.

MAGISTRATE'S APPEAL.

J. B. Jeyaretnam (Deputy Public Prosecutor) for the appellant.

Punch Coomaraswamy, amicus curiae.

Cur. Adv. Vult.

Chua J.: This is an appeal from the decision of a magistrate.

The respondent was charged as follows:—

"That you at or about 3.05 p.m. on 17.11.56 being the holder of a Provisional Driving Licence did fail to display "L" plates to the front and rear of motor cycle S.6698 whilst driving along Keppel Road and thereby committed an offence under rule 14(6)(3) and punishable under rule 3 of Motor Vehicles (Driving Licences) Rules 1948.

2. That you at or about 3.05 p.m. on 17.11.56 being the holder of a Provisional Driving Licence did convey a pillion passenger who was not in possession of a driving licence on motor cycle S.6698 whilst driving along Keppel Road and thereby committed an offence under rule 14(6)(2) and punishable under rule 3 of Motor Vehicles (Driving Licences) Rules 1948.

3. That you at or about 3.05 p.m. on 17.11.56 did use motor cycle S.6698 along Keppel Road whilst not covered by 3rd Party Insurance, and thereby committed an offence under section 46(1) and punishable under section 46(2) Road Traffic Ordinance Cap. 227".

The respondent who appeared in person pleaded guilty to all the three charges but the magistrate would not accept his plea of guilty to the 2nd and 3rd charges. After the prosecution's case the magistrate convicted the respondent on the first and second charges and acquitted him on the third charge as the magistrate was of the opinion that the prosecution had failed to prove beyond reasonable doubt that the respondent was not covered by third party insurance. The Crown now appeals against the acquittal on the third charge.

In this appeal Mr. Punch Coomaraswamy appeared before this court as *amicus curiae* and argued the appeal for the respondent.

The facts are not in dispute. On the 17th November 1956 at about 3.05 p.m. police constable 1543 of the traffic police mobile squad was in Keppel Road when he saw a motor cycle S.6698 driven by the respondent with a pillion rider, a Chinese woman, going along the road. He stopped the respondent. On checking he found that the respondent was the holder of a provisional driving licence and there were no "L" plates on the front and the back of the respondent's motor cycle and the pillion rider was not a holder of a driving licence.

There is no dispute that the respondent was driving his motor cycle in breach of the conditions of his provisional licence namely that he carried a pillion rider who was not a holder of a driving licence and he failed to display "L" plates on the front and on the back of his motor cycle. At the trial a policy of insurance in the name of the respondent in respect of the motor cycle S.6698 covering third party risk and valid from the 14th May, 1956 to the 13th May, 1957 was produced.

The Crown submits that the policy of insurance covers the respondent only if he holds a licence to drive the motor cycle and contends that as the respondent was riding his motor cycle in breach of the essential conditions of his provisional driving licence he was riding his motor cycle without a licence and therefore was using the vehicle without there being in force a policy of insurance in respect of third party risk which is an offence under section 46(1) of the Road Traffic Ordinance (Cap. 227).

As authority for the above proposition Mr. Jeyaretnam for the Crown cited the case of *Ratnam & Anor.* v. *The Public Insurance Co.*[1] and quoted the following passage in the judgment of the learned Chief Justice ([1956] M.L.J. p. 152):—

"Having reached this conclusion on the first question, it is not necessary for me to decide whether Griffin was a licensed driver within the meaning of the policy at the time of the accident but in view of the importance of this matter, I will state my conclusion on it. The relevant clause in the policy reads as follows:—

'....the company will indemnify any person who is driving such motor car on the insured's order or with his permission provided that such person....holds a licence to drive such motor car....'

The words 'holds a licence to drive such motor car' must in my opinion, be construed to mean 'holds a licence entitling him to drive such motor car'. It is clear that a provisional licence-holder who complies with the statutory condition requiring him to be accompanied by a supervisor could lawfully drive the insured car on the highway and therefore it follows that a provisional licence-holder, driving in these circumstances, holds a licence entitling him to drive the insured car within the meaning of this clause in the policy. But obviously different considerations arise when a provisional licence-holder ignores the condition of his licence and ventures on to the highway alone. Not only is there a statutory presumption that such a person is not competent to drive the insured car without supervision, but his very presence on the highway is, as Lord Hewart pointed out in *Rubie* v. *Faulkner,*[2] unlawful because he has failed to comply with the essential condition on which a provisional licence-holder is allowed to drive a motor vehicle on the highway. It would, in my opinion, be a contradiction in terms to say of such a driver that he holds a licence entitling him to drive when his driving is, in law, unlawful. The proper view is to regard the policy as suspended whilst the insured car is being unlawfully driven and as re-attaching when lawful user is resumed. This principle has been recognised and applied in cases where an insured vehicle is used for a different purpose or driven in a different locality from that covered by the policy and in my judgment, it is equally applicable to the situation which arises

when a provisional licence-holder drives a car on the highway without a supervisor. Accordingly I find that this policy was suspended whilst Griffin was driving the insured car unaccompanied by a supervisor and consequently the defendants were not on risk when this accident occurred."

Mr. Jeyaretnam also quoted the following passage in the judgment of the Court of Appeal in the same case (reported in [1957] M.L.J. 158 at p. 159) :—

"It has been submitted on behalf of the appellants that, as the law makes it an offence not to comply with a condition subject to which a provisional licence is granted, it follows that in the absence of an express provision any provisional licence holder on the road who is in breach of the condition of his licence is still 'the holder of a licence'. The form of a provisional licence reads as follows:—

'The Motor Vehicles (Driving Licences) Rules 1948

(Rule 14(4))

Form of Provisional Licence
Road Traffic Ordinance 1941

DRIVING LICENCE

. . . . . .
of. . . . . .
is hereby licensed to drive. . . . . .
from . . . . . 19 , until . . . . . 19 .
inclusive, subject to the conditions prescribed in paragraph (4) of Rule 14 of the Motor Vehicles (Driving Licences) Rules, 1948.

Fee of $2 received

(Issuing authority) . . . . . .'

It is clear to us that the law only permits a person who is learning to drive to drive a car on a road if he complies with the prescribed regulations. If he drives a car in breach of those conditions, then he is driving it without authority under the law."

There is no doubt that a provisional licence-holder who drives a vehicle in breach of the conditions of his provisional licence is driving it without authority under the law and consequently does not hold a licence to drive.

The main question in this appeal is whether the respondent was using his motor cycle without there being in force a policy of insurance in respect of third party risk.

Let us examine the policy of insurance which was produced in the magistrate's court.

The relevant clause in the policy reads as follows:—

"SECTION II. — LIABILITY TO THIRD PARTIES.

1. Subject to the limit of liability stated in the Schedule hereto the Company will indemnify the Insured in the event of accident caused by or through or in connection with any Motor Cycle described in the said Schedule against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay ....."

In the Schedule of the policy the following appears:—

"ADDITIONAL DRIVER(S)

It is hereby understood and agreed that in terms of and subject to the limitations of the indemnity which is granted by section II of this policy to the insured the company will indemnify any driver described in the schedule thereto who is driving any motor cycle described in such schedule for the purposes set out in the Limitations as to Use therein:—

Provided always that:—

(a) Such driver is not entitled to indemnity under any other Policy.

(b) Such driver shall as though he were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply.

Description of Drivers:

(b) The Policyholder.

(b) Any person who is driving on the Policyholder's order or with his permission.

Provided that the person driving holds a licence to drive such Motor Cycle or has held and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf for holding or obtaining such a licence."

It is submitted on behalf of the respondent that the insurance company by the first clause in section II, set out above, will indemnify the respondent in the event of accident caused by or through or in connection with the motor cycle S.6698 and that the proviso in the "Description of Drivers" apply only to "any person who is driving on the Policyholder's order or with his permission". In other words the respondent is covered whenever he drives the motor cycle S.6698 whether he is a holder of a licence or not.

It is argued by Mr. Coomaraswamy that as far as the insurance company is concerned by issuing the policy they have satisfied themselves that they will take risk whenever the respondent is driving whether the respondent is a holder of a driving licence or not, but where a person other than the respondent drives they will only take risk if such person holds a licence.

I agree that the policy can be interpreted in the manner submitted by Mr. Coomaraswamy and until the insurance company have disclaimed liability and say that they were not on risk when the respondent drove the motor cycle at 3.05 p.m. on 17th November, 1956, it cannot be said with certainty that there was no insurance in force when the respondent was driving his motor cycle.

It must be remembered that this is a criminal case and the onus of proving beyond a reasonable doubt that the respondent has committed the offence is on the prosecution. In the case of *T. S. B. Maniam* v. *Public Prosecutor* [3] Horne J. in the course of his judgment said:—

"It is for the prosecution to prove that the policy was not in fact in force at the time of the user alleged and all the prosecution do is to ask the magistrate to construe an offence out of the terms of the insurance certificate and the conditions of the licence. This method lacks the certainty demanded by law when a penalty is to be imposed upon the subject. It must be proved beyond reasonable doubt that there was no policy in force and until the policy has in fact been avoided by the insurer

no magistrate can safely convict solely on an admission of the breach of condition of the licence."

In this case as the prosecution had failed to satisfy the magistrate beyond reasonable doubt that there was no policy of insurance in force by not calling a representative of the insurance company as to whether or not they considered themselves on risk, the magistrate was in duty bound to give the benefit of the doubt to the respondent and find him not guilty.

The appeal is dismissed.

Appeal dismissed.

PAPOO v. VEERIAH

[O.C.J. (Good J.) March 13, 1959]

[Ipoh — Originating Summons No. 53 of 1958]

Land laws — T.O.L. — Dwelling house built on land subject to temporary occupation licence — Whether capable of assignment — Whether forms part of the estate of the licensee.

This was an application by the widow and administratrix of the estate of a deceased person to transfer to her own name as sole beneficiary of the estate of the deceased a house which was built upon land which was the subject of a temporary occupation licence. There was a purported sale of the house by a former administratrix of the estate to the respondent and the temporary occupation licence had been re-issued in the name of the respondent.

Held: (1) neither land the subject of a temporary occupation licence nor anything which is attached to the land can be transferred or pass on intestacy or be transmitted by the will of a testator;

(2) in this case the application must be dismissed as the applicant had no right to occupy the land or the house that stands upon it.

Case referred to:—

(1) *Hee Cheng* v. *Krishnan* [1955] M.L.J. 103.

ORIGINATING SUMMONS.

S. A. Lingam for the applicant.

F. C. Arulanandom for the respondent.

Good J. (delivering oral judgment): This is an application by the widow and administratrix of A. Vengadasalam Pillay, deceased, to transfer to her own name as sole beneficiary of the estate of the deceased a house in the Tamil Settlement at Guntong, Ipoh, which is built upon land that is the subject of the temporary occupation licence. This is yet another example of a state of affairs which is unfortunately all too common where there is a discrepancy between the person in whose name the temporary occupation licence is issued and the person claiming to be entitled to the ownership of a dwelling house upon the land which is the subject of that temporary occupation licence. I should have thought that by now the position would have been well understood. The learned Chief Justice of the Federation, as Mr. Justice Thomson in 1955, delivered a judgment in *Hee Cheng* v. *Krishnan* [1] which left the matter in no doubt whatever. The public, however, apparently continue to treat land held under temporary occupation licence as if such a licence was capable of transferring some kind of title to the holder and as if it conferred upon the holder a right to deal in land, or in things attached to the land, which comes to the same thing, as if it was land in the ownership of the licence holder. Even the administration appear to share the misapprehension of the public so far as buildings on the land are concerned because in this case there is a letter from the assistant district officer, Ipoh, to the former solicitor of the applicant in which he says that he has renewed the licence in the respondent's name for the year 1958, and that the court has not decided the ownership of the house under the temporary occupation licence in question but that the present temporary occupation licence may be cancelled and a fresh one issued in the name of anyone whom the court may decide to be the owner of the house. That, with the greatest respect to the writer of the letter, discloses a complete misconception of the true legal position as regards houses built on State land held under temporary occupation licence. A temporary occupation licence is exactly what the name implies. It is a licence to occupy and nothing more. As I said in a recent judgment in Civil Suit No. 326 of 1957: "It is perfectly clear that if the holder of a temporary occupation licence chooses to put up a building on the State land which he occupies by virtue of that licence, he takes the risk of losing what he has put into that building." If it had been necessary to the determination of that case I would have gone further; and I go further now and say that if people choose to deal in building erected on State land which is the subject of a temporary occupation licence, if they acquire such buildings for valuable consideration, they do so at their own risk because they know, or they ought to know and they must be deemed to know, that such buildings cannot be the subject of private transactions unless in the absence of any contract to the contrary to which the State Government may be a party, such buildings are clearly the property of the State.

In the present case, the deceased, Vengadasalam Pillay, was the holder of a temporary occupation licence over State land upon which the house in question was built. He left the house to his widow, the present applicant. In my opinion, and I have given careful consideration to Mr. Lingam's submission in this respect, the provisions of Land Rule 41, "No licence for the temporary occupation of State land shall be transferable" applies to transmission on the death of the licence holder to the same extent as it